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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,336	03/29/2004	Russell C. Scaduto	11218-0006	2699

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EXAMINER	
AKANBI, ISIAKA O	

ART UNIT	PAPER NUMBER
2877	

DATE MAILED: 11/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/812,336	SCADUTO, RUSSELL C.	
	Examiner	Art Unit	
	Isiaka O. Akanbi	2877	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 September 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *3,4 and 14-20* is/are allowed.

6)☒ Claim(s) *1,5 and 7-13* is/are rejected.

7)☒ Claim(s) *2 and 6* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *29 March 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Amendment

The amendment file 20 September 2006 has been entered into this application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 5 and 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petersen et al. (6,657,718 B1) in view of Robert (3,614,243)

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Petersen in view of Robert. The reference of Petersen teaches of a sample chamber for a test specimen of claim 1, comprising a main body (16), an optical element (11/30/33), the optical element having a surface for holding a test specimen, the optical element being operatively connected to the main body by a force applied to the surface for holding the test specimen, means (9/14/15) for applying a force for holding the test specimen of the optical element to operatively connect the optical element to the main body, the means for applying a force comprising at least one sealing element, the at least one sealing element being configured and disposed between the main body and the optical element (col. 4, line 33-65), the main body, the optical element and the at least one sealing element form a sample well upon the optical element being operatively connected to the main body by the means for applying a force (fig. 2)(col. 4, line 40-65). The reference of Petersen is silent regarding the orientation of the structure as to the optical element being disposed to form a bottommost portion of the sample chamber and the means for applying a force to a continuous portion of the surface for holding the test specimen of the optical element to operatively connect the optical element to the main body. The reference of Robert teaches of means (18/28) for applying a force to a continuous portion of the surface for

holding the test specimen (fig. 4). It would have been obvious to one having ordinary skill in the art at the time of invention to provide means for applying a force to a continuous portion of the surface for holding the test specimen of the optical element to operatively connect the optical element to the main body for the purpose of forming a vacuum/fluid-tight sealing/connecting. Additionally, It would have been obvious to one having ordinary skill in the art at the time of invention to provide an orientation (i.e. above/below) of the structure of the claim, would have been a matter of rearrangements. Therefore it would have been obvious to one having ordinary skill in the art at the time of invention to invert the structure to meet the terms of the claim because orientation does not matter within the scope of the claim. (see In re Kuhle, 526 F.2d 553, 188 USPQ 7 (CCPA 1975) (see In re Japikse, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950).

As to claim 5, Petersen and Robert disclose everything claimed, as applied to claim 1 above, in addition Petersen discloses wherein the at least one optical element (11) is configured to permit visual inspection of a test specimen in the sample (col. 4, line 40-41).

As regard to claims 7, 8 and 9, Petersen and Robert disclose everything claimed, as applied to claim 1 above, in addition Petersen discloses at least one tube (23/24) being configured and disposed to add or withdraw samples or specimens from the sample well and wherein the main body comprising at least one aperture in communication with the sample well and the at least one tube is at least partially disposed in the at least one aperture and means (25/26) for attaching the at least one tube to the at least one aperture in the main body (figs. 1 and 2)(col. 5, line 45-54).

As to claim 10, Petersen and Robert disclose everything claimed, as applied to claim above, in addition Petersen discloses wherein the first aperture and the second aperture are disposed on opposite sides of the sample well to provide for substantially laminar flow of samples or specimens through the sample well (fig. 2)(col. 5, line 51-55).

As to claim 11, Petersen and Robert disclose everything claimed, as applied to claim above, in addition Petersen discloses wherein the main body comprises one of a plastic material and a metallic material (col. 3, line 24-26) and the at least one optical element comprising one of a glass material (11) and a plastic material (col. 4, line 33-35)

As to claim 12, Petersen and Robert disclose everything claimed, as applied to claim above, in addition Petersen discloses wherein the at least one optical element is coated with at least one of an electrical conductivity coating material, an antireflective coating material and a transmission enhancing coating material (col. 5, line 55-65).

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Petersen et al. (6,657,718 B1) as applied to claim 1, in view of the examiner Official Notice.

As to claim 13, the reference of Petersen is silent with regard to wherein the at least one sealing element is at least one adhesive ring. The examiner wishes to take Official Notice of the fact that the use of adhesive ring for sealing is known in the art. It would have been obvious to one having ordinary skill in the art at the time of invention to use at least one sealing element with at least one adhesive ring for the purpose of improving the sealing.

Response to Arguments

Applicant's arguments/remarks, see pages 7-11, filed 20 September 2006, with respect to the rejection(s) of claim(s) 1-2, 2-7 and 12-13 under 35 U.S.C. 102(e) and 35 U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made.

Allowable Subject Matter

Claims 3-4 and 14-20 are allowed over the prior art of record.

The examiner's statement of reasons for allowance is indicated in the previous Official Action dated June 22, 2005.

Claims 2 and 6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

As to claim 2, the prior art of record, taken alone or in combination, fails to disclose or render obvious the means for applying a force further comprises a vacuum connection, the vacuum connection being configured and disposed to provide a vacuum force between the at least two sealing elements to operatively connect the at least one optical element to the main body using the vacuum force, in combination with the rest of the limitations of the claim. Claim 6 is allowable by virtue of its dependency.

Additional Prior Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references listed in the attached form PTO-892 teach of other prior art sample chamber for a test specimen that may anticipate or obviate the claims of the applicant's invention.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Official Notice

Several facts have been relied upon from the personal knowledge of the examiner about which the examiner took Official Notice. Applicant must seasonably challenge well known statements and statements based on personal knowledge. In re Selmi, 156 F.2d 96, 70 USPQ 197 (CCPA 1946); In re Fischer, 125 F.2d 725, 52 USPQ 473 (CCPA 1942). See also In re Boon, 439 F.2d 724, 169 USPQ 231 (CCPA 1971) (a challenge to the taking of judicial notice must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying the judicial notice). If applicant does not seasonably traverse the well-known statement during examination, then the object of the well-known statement is taken to be admitted prior art. In re Chevenard, 139 F.2d 71, 60 USPQ 239 (CCPA 1943). A seasonable challenge constitutes a demand for evidence made as soon as practicable

during prosecution. Thus, applicant is charged with rebutting the well-known statement in the next reply after the Office action in which the well-known statement was made. See MPEP 2144.03, paragraphs 4 and 6.

Fax/Telephone Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isiaka Akanbi whose telephone number is (571) 272-8658. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley Jr. can be reached on (571) 272-2059. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Isiaka Akanbi
November 17, 2006

Gregory J. Toatley, Jr.
Supervisory Patent Examiner